DEPARTMENT OF STATE REVENUE

SUPPLEMENTAL LETTER OF FINDINGS NUMBER: 04-0002
CORPORATE INCOME TAX
For the Tax Year Ended January 29, 2000

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ISSUES

I. Adjusted Gross Income Tax-Combined Return

Authority: IC 6-3-2-2(m), IC 6-3-2-2(p), IC 6-8.1-5-1(b).

The taxpayer protests the combination of the taxpayer's Indiana adjusted gross income tax returns with affliated corporations.

II. Adjusted Gross Income Tax- Foreign Source Dividend Deduction

Authority: IC 6-3-2-2.2(g).

The taxpayer protests the amount of the foreign source dividend deduction.

STATEMENT OF FACTS

The taxpayer is a holding corporation. The Indiana Department of Revenue (department) audited the taxpayer and its related corporations for the tax year ended January 29, 2000. As a result of the audit, the department assessed additional gross income tax, adjusted gross income tax, interest and penalty against the taxpayer. A hearing was held and a Letter of Findings was issued on April 28, 2005. That Letter of Findings dealt with the gross income tax issues but not the adjusted gross income tax issues. A rehearing was requested and granted. Pursuant to the taxpayer's request, this Supplemental Letter of Findings is based on the documentation in the file.

I. Adjusted Gross Income Tax-Combined Return

Discussion

In the audit, the department forced the taxpayer and its related corporations to file a combined Indiana adjusted gross income tax return instead of separate Indiana adjusted gross income tax returns pursuant to IC 6-3-2-2(m). The taxpayer protests this forced combination.

The taxpayer argues that pursuant to IC 6-3-2-2(p), the department cannot force combined Indiana adjusted gross income tax reporting unless the taxpayer's adjusted gross income cannot otherwise be fairly reflected. The taxpayer contends that since all of the transactions between the taxpayers and its affiliates were at arms length rates, the separate adjusted gross income tax returns properly and fairly reflect the taxpayer's Indiana adjusted gross income and tax liability.

Pursuant to IC 6-8.1-5-1(b), all tax assessments are presumed to be accurate and the taxpayer bears the burden of proving that any assessment is incorrect. In this case, the taxpayer made allegations but offered no evidence to support those statements. Therefore, the taxpayer did not sustain its burden of proving that the department improperly combined the Indiana adjusted gross income tax returns.

Finding

The taxpayer's protest is denied.

II. Adjusted Gross Income Tax- Foreign Source Dividend Deduction

Discussion

The taxpayer contends that even if combination of Indiana adjusted gross income tax returns is allowed, an error was made in the calculation of the combined Indiana adjusted gross income tax. Specifically, the taxpayer contends that the department allowed less than the full amount of the foreign source dividend deduction under IC 6-3-2-1.1(g).

At the time of the audit, the taxpayer did not provide the department with a copy of the Consolidated Federal 1120 return, Schedule C. Consequently the department used the "Proforma" Federal 1120, Schedule C return which was provided. This proforma schedule did not include all of the companies included in the Unitary Group as determined by the department. Based on the information available at the time of the audit, the department allowed a deduction for Foreign Gross Up in the amount of $43,099,169 and a deduction for Foreign Dividend Expense in the amount of $58,754,225. On March 10, 2005, the taxpayer submitted a copy of the Consolidated Federal 1120, Schedule C to the department.

Upon review of the submitted documentation, the department finds that the correct amount of Gross Up which should be deducted is $48,049,662 (instead of $43,099,169). The correct amount of the Foreign Dividend Deduction which should be deducted is $197,106,158 (instead of $58,754,225).

Finding

The taxpayer's protest is sustained.

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